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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

15 Sensa Products (assignment for the
16 benefit of creditors), LLC, a California
17 Limited Liability Company, as
18 assignee of Sensa Products, LLC, a
19 Delaware Limited Liability Company,

20 Plaintiff,

21 v.

22 Alan Hirsch, an individual, and DOES
23 1-20 inclusive,

24 Defendants.

25 Case No. 2:15-cv-07117-GHK

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**DEFENDANT ALAN HIRSCH'S
ANSWER AND AFFIRMATIVE
DEFENSES TO COMPLAINT FOR:
(1) BREACH OF CONTRACT (2)
RESTITUTION (3) FRAUDULENT
CONVEYANCE (ACTUAL FRAUD)
(4) FRAUDULENT CONVEYANCE
(CONSTRUCTIVE FRAUD) (5)
PREFERENTIAL TRANSFER AND
COUNTERCLAIM**

Hon. George H. King

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
 2 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION:**

3 Defendant Alan Hirsch (the “Defendant”) hereby responds to the *Complaint*
 4 *For: (1) Breach Of Contract (2) Restitution (3) Fraudulent Conveyance (Actual*
 5 *Fraud) (4) Fraudulent Conveyance (Constructive Fraud) (5) Preferential Transfer*
 6 *(the “Complaint”) filed by Sensa Products (assignment for the benefit of creditors),*
 7 *LLC, a California Limited Liability Company, as assignee of Sensa Products, LLC,*
 8 *a Delaware Limited Liability Company (the “Plaintiff”) and submits his Affirmative*
 9 *Defenses to the Complaint:¹*

10 1. The Defendant lacks sufficient knowledge or information to enable him
 11 to form a belief about the truth of the allegations in paragraph 1 of the Complaint
 12 and on that basis denies each of the allegations set forth therein.

13 2. The Defendant lacks sufficient knowledge or information to enable him
 14 to form a belief about the truth of the allegations in paragraph 2 of the Complaint
 15 and on that basis denies each of the allegations set forth therein.

16 3. The Defendant lacks sufficient knowledge or information to enable him
 17 to form a belief about the truth of the allegations in paragraph 3 of the Complaint
 18 and on that basis denies each of the allegations set forth therein.

19 4. The Defendant lacks sufficient knowledge or information to enable him
 20 to form a belief about the truth of the allegations in paragraph 4 of the Complaint
 21 and on that basis denies each of the allegations set forth therein.

22 5. The Defendant lacks sufficient knowledge or information to enable him
 23 to form a belief about the truth of the allegations in paragraph 5 of the Complaint
 24 and on that basis denies each of the allegations set forth therein.

25 6. The Defendant lacks sufficient knowledge or information to enable him

26 27 ¹ The Fifth Cause of Action in the Complaint was dismissed with prejudice by Order of the
 Court dated March 2, 2016 [Doc. 17]. Therefore, this Answer does not respond to paragraphs 69
 through 76 of the Complaint.

1 to form a belief about the truth of the allegations in paragraph 6 of the Complaint
2 and on that basis denies each of the allegations set forth therein.

3 7. The Defendant admits the allegations in paragraph 7 of the Complaint.

4 8. The Defendant admits only that he is a resident of Riverwoods, Illinois.
5 The Defendant lacks sufficient knowledge or information to enable him to form a
6 belief about the truth of the remaining allegations in paragraph 8 of the Complaint
7 and on that basis denies each of the remaining allegations set forth therein.

8 9. The Defendant lacks sufficient knowledge or information to enable him
9 to form a belief about the truth of the allegations in paragraph 9 of the Complaint
10 and on that basis denies each of the allegations set forth therein.

11 10. The Defendant admits only that he consented to the exclusive
12 jurisdiction of state and federal courts located in Los Angeles County with respect to
13 legal actions arising out of or related to the Operating Agreement. The Defendant
14 lacks sufficient knowledge or information to enable him to form a belief about the
15 truth of the remaining allegations in paragraph 10 of the Complaint and on that basis
16 denies each of the remaining allegations set forth therein.

17 11. The Defendant admits only that he waived any objection to venue in
18 state and federal courts located in Los Angeles County with respect to legal actions
19 arising out of or related to the Operating Agreement. The Defendant lacks
20 sufficient knowledge or information to enable him to form a belief about the truth of
21 the remaining allegations in paragraph 11 of the Complaint and on that basis denies
22 each of the remaining allegations set forth therein.

23 12. The Defendant admits only that he held a 10% membership interest in
24 Sensa and Intelligent Beauty held a 90% membership interest in Sensa. The
25 Defendant lacks sufficient knowledge or information to enable him to form a belief
26 about the truth of the remaining allegations in paragraph 12 of the Complaint and on
27 that basis denies each of the remaining allegations set forth therein.

28 13. The Defendant admits only that he signed the Operating Agreement

1 and that Exhibit "2" to the Complaint appears to be a copy of the Operating
 2 Agreement and five amendments thereto. The Defendant lacks sufficient
 3 knowledge or information to enable him to form a belief about the truth of the
 4 remaining allegations in paragraph 13 of the Complaint and on that basis denies
 5 each of the remaining allegations set forth therein.

6 14. The Defendant admits only that (a) in exchange for 100 units in Sensa,
 7 Hirsch contributed to Sensa as his initial capital contribution the primary intellectual
 8 property required for Sensa's business and technology operations, consisting of an
 9 exclusive license to use certain patents owned by the Defendant, and any future
 10 worldwide patents or utility models filed or invented by the Defendant, as set forth
 11 in the License Agreement between the Defendant and Sensa, so that Sensa might
 12 develop, market and sell the Products (as defined in the Operating Agreement), and
 13 (b) the Defendant entered into a Consultant Agreement with Sensa to perform
 14 certain services to ensure that the technology was implemented successfully by
 15 Sensa. The Defendant denies the remaining allegations in paragraph 14 of the
 16 Complaint.

17 15. The Defendant admits only that the original Operating Agreement
 18 provided that "Net Profits shall be allocated as follows: first to IBI until the Note is
 19 repaid in full; and second, to the Members in proportion to their Percentage Interest,
 20 subject to the Advance repayment requirements set forth in Section 6.5 below." The
 21 Defendant denies the remaining allegations in paragraph 15 of the Complaint.

22 16. The Defendant admits the allegations in paragraph 16 of the Complaint.

23 17. The Defendant denies the allegations in paragraph 17 of the Complaint.

24 18. The Defendant admits only that the fifth amendment to the Operating
 25 Agreement dated as of April 1, 2012 modified section 6.5 of the Operating
 26 Agreement to provide, among other things, that "(a) Beginning on April 1, 2012, the
 27 Company shall make monthly Advance payments to Hirsch in equal payments of
 28 \$150,000 per month. (b) all future distribution payments to Hirsch shall be set off

1 and applied by the Company directly to repayment of outstanding Advances, until
 2 such Advances are paid back to the Company in full by Hirsch. (c)... the Company
 3 shall make, as an Advance payment to Hirsch, the amount equal to Hirsch's Tax
 4 Liability for such time period... [and] (e) In the event that the Company is dissolved
 5 pursuant to Section 9.1(b), Hirsch shall not be required to repay Advances to the
 6 Company." The Defendant denies the remaining allegations in paragraph 18 of the
 7 Complaint.

8 19. The Defendant denies the allegations in the first sentence of paragraph
 9 19 of the Complaint. The Defendant lacks sufficient knowledge or information to
 10 enable him to form a belief about the truth of the remaining allegations in paragraph
 11 19 of the Complaint and on that basis denies each of the remaining allegations set
 12 forth therein.

13 20. The Defendant denies the allegations in the last sentence of paragraph
 14 20 of the Complaint. The Defendant lacks sufficient knowledge or information to
 15 enable him to form a belief about the truth of the remaining allegations in paragraph
 16 20 of the Complaint and on that basis denies each of the remaining allegations set
 17 forth therein.

18 21. The Defendant denies the allegations in the last sentence of paragraph
 19 21 of the Complaint. The Defendant lacks sufficient knowledge or information to
 20 enable him to form a belief about the truth of the remaining allegations in paragraph
 21 21 of the Complaint and on that basis denies each of the remaining allegations set
 22 forth therein.

23 22. The Defendant denies that he received approximately \$94,909 in
 24 Distributions and at least \$3,071,600 in Advances from Sensa in Fiscal Year 2012.
 25 The Defendant lacks sufficient knowledge or information to enable him to form a
 26 belief about the truth of the remaining allegations in paragraph 22 of the Complaint
 27 and on that basis denies each of the remaining allegations set forth therein.

28 23. The Defendant denies the allegations in the last sentence of paragraph

1 23 of the Complaint. The Defendant lacks sufficient knowledge or information to
2 enable him to form a belief about the truth of the remaining allegations in paragraph
3 23 of the Complaint and on that basis denies each of the remaining allegations set
4 forth therein.

5 24. The Defendant admits only that he received \$600,000 from Sensa in
6 2014. The Defendant lacks sufficient knowledge or information to enable him to
7 form a belief about the truth of the remaining allegations in paragraph 24 of the
8 Complaint and on that basis denies each of the remaining allegations set forth
9 therein.

10 25. The Defendant lacks sufficient knowledge or information to enable him
11 to form a belief about the truth of the allegations in paragraph 25 of the Complaint
12 and on that basis denies each of the allegations set forth therein.

13 26. The Defendant lacks sufficient knowledge or information to enable him
14 to form a belief about the truth of the allegations in paragraph 26 of the Complaint
15 and on that basis denies each of the allegations set forth therein.

16 27. The Defendant lacks sufficient knowledge or information to enable him
17 to form a belief about the truth of the allegations in paragraph 27 of the Complaint
18 and on that basis denies each of the allegations set forth therein.

19 28. The Defendant lacks sufficient knowledge or information to enable him
20 to form a belief about the truth of the allegations in paragraph 28 of the Complaint
21 and on that basis denies each of the allegations set forth therein.

22 29. The Defendant denies the allegations in paragraph 29 of the Complaint,
23 except the Defendant admits that the Hirsch Study was not double blind.

24 30. The Defendant lacks sufficient knowledge or information to enable him
25 to form a belief about the truth of the allegations in paragraph 30 of the Complaint
26 and on that basis denies each of the allegations set forth therein.

27 31. The Defendant lacks sufficient knowledge or information to enable him
28 to form a belief about the truth of the allegations in paragraph 31 of the Complaint

1 and on that basis denies each of the allegations set forth therein.

2 32. The Defendants admits that Exhibit “4” to the Complaint is a copy of
3 the FTC Settlement, and the Defendant denies any of the allegations in paragraph 32
4 of the Complaint inconsistent therewith.

5 33. The Defendant repeats and incorporates by reference the foregoing
6 responses to paragraphs 1 through 32 as if fully set forth herein.

7 34. The Defendant admits the allegations in paragraph 34 of the Complaint.

8 35. The Defendant denies the allegations in paragraph 35 of the Complaint.

9 36. The Defendant lacks sufficient knowledge or information to enable him
10 to form a belief about the truth of the allegations in paragraph 36 of the Complaint
11 and on that basis denies each of the allegations set forth therein.

12 37. The Defendant admits only that he signed the Operating Agreement.
13 The Defendant lacks sufficient knowledge or information to enable him to form a
14 belief about the truth of the remaining allegations in paragraph 37 of the Complaint
15 and on that basis denies each of the remaining allegations set forth therein.

16 38. The Defendant admits only that he signed the Operating Agreement, as
17 amended, governed Sensa’s obligations to the Defendant. The Defendant denies the
18 remaining allegations in paragraph 38 of the Complaint.

19 39. The Defendant lacks sufficient knowledge or information to enable him
20 to form a belief about the truth of the allegations in paragraph 39 of the Complaint
21 and on that basis denies each of the allegations set forth therein.

22 40. The Defendant denies the allegations in paragraph 40 of the Complaint

23 41. The Defendant denies the allegations in paragraph 41 of the Complaint,
24 except the Defendant admits that he was entitled to certain monthly “Advances”
25 from Sensa pursuant to section 6.5 of the Operating Agreement.

26 42. The Defendant lacks sufficient knowledge or information to enable him
27 to form a belief about the truth of the allegations in paragraph 42 of the Complaint
28 and on that basis denies each of the allegations set forth therein.

1 43. The Defendant denies the allegations in paragraph 43 of the Complaint.
2 44. The Defendant denies the allegations in paragraph 44 of the Complaint.
3 45. The Defendant denies the allegations in paragraph 45 of the Complaint.
4 46. The Defendant repeats and incorporates by reference the foregoing
5 responses to paragraphs 1 through 45 as if fully set forth herein.

6 47. The Defendant denies the allegations in paragraph 47 of the Complaint.
7 48. The Defendant denies the allegations in paragraph 48 of the Complaint.
8 49. The Defendant denies the allegations in paragraph 49 of the Complaint.
9 50. The Defendant denies the allegations in paragraph 50 of the Complaint.
10 51. The Defendant lacks sufficient knowledge or information to enable him
11 to form a belief about the truth of the allegations in paragraph 51 of the Complaint
12 and on that basis denies each of the allegations set forth therein.

13 52. The Defendant lacks sufficient knowledge or information to enable him
14 to form a belief about the truth of the allegations in paragraph 52 of the Complaint
15 and on that basis denies each of the allegations set forth therein.

16 53. The Defendant denies the allegations in paragraph 53 of the Complaint.
17 54. The Defendant denies the allegations in paragraph 54 of the Complaint.
18 55. The Defendant denies the allegations in paragraph 55 of the Complaint.
19 56. The Defendant repeats and incorporates by reference the foregoing
20 responses to paragraphs 1 through 55 as if fully set forth herein.

21 57. The Defendant lacks sufficient knowledge or information to enable him
22 to form a belief about the truth of the allegations in paragraph 57 of the Complaint
23 and on that basis denies each of the allegations set forth therein.

24 58. The Defendant lacks sufficient knowledge or information to enable him
25 to form a belief about the truth of the allegations in paragraph 58 of the Complaint
26 and on that basis denies each of the allegations set forth therein.

27 59. The Defendant admits only that he received payments from Sensa of
28 approximately \$2.5 million in 2012 and \$2 million in 2013, a substantial portion of

which was used to pay income taxes. The Defendant lacks sufficient knowledge or information to enable him to form a belief about the truth of the remaining allegations in paragraph 59 of the Complaint and on that basis denies each of the remaining allegations set forth therein.

60. The Defendant lacks sufficient knowledge or information to enable him
to form a belief about the truth of the allegations in paragraph 60 of the Complaint
and on that basis denies each of the allegations set forth therein.

3 61. The Defendant lacks sufficient knowledge or information to enable him
4 to form a belief about the truth of the allegations in paragraph 61 of the Complaint
5 and on that basis denies each of the allegations set forth therein.

11 62. The Defendant denies the allegations in paragraph 62 of the Complaint.

12 63. The Defendant denies the allegations in paragraph 63 of the Complaint.

13 64. The Defendant repeats and incorporates by reference the foregoing
14 responses to paragraphs 1 through 63 as if fully set forth herein.

15 65. The Defendant lacks sufficient knowledge or information to enable him
16 to form a belief about the truth of the allegations in paragraph 65 of the Complaint
17 and on that basis denies each of the allegations set forth therein.

18 66. The Defendant lacks sufficient knowledge or information to enable him
19 to form a belief about the truth of the allegations in paragraph 66 of the Complaint
20 and on that basis denies each of the allegations set forth therein.

21 67. The Defendant denies the allegations in paragraph 67 of the Complaint.

22 68. The Defendant denies the allegations in paragraph 68 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

24 The Complaint, and each purported claim therein, fails to state a claim upon
25 which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

27 Plaintiff's claims are barred in whole or in part by the applicable statutes of
28 limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or part by the doctrine of *in pari delicto*.

FOURTH AFFIRMATIVE DEFENSE

The Defendant was a good faith transferee and provided value for each and every payment that he received from Sensa.

FIFTH AFFIRMATIVE DEFENSE

The Defendant has a right of setoff against Plaintiff with respect to amounts due and owing to the Defendant as set forth in the Defendant's Proof of Claim dated April 15, 2015. This includes approximately \$39,000 for non-reimbursed legal fees and costs incurred for prosecution and maintenance of licensed intellectual property; \$1,050,000 for unpaid Advances for the period of April 2014 through October 2014; and additional, unliquidated amounts based on Sensa's breach of the License Agreement and failure to return the intellectual property to the Defendant.

DEFENDANT'S PRAYER FOR RELIEF

WHEREFORE, Defendant respectfully prays for judgment as follows:

1. That the Complaint be dismissed with prejudice;
2. That judgment be entered in favor of Defendant on all claims;
3. That Defendant be awarded his costs and attorney's fees; and
4. For such other and further relief as the Court may deem just and proper.

Dated: March 23, 2016

SHAW FISHMAN GLANTZ & TOWBIN LLC
Gordon E. Gouyeia

-and-

LANDAU GOTTFRIED & BERGER LLP
Michael I. Gottfried
Aleksandra Zimonjic
Roye Zur

By:

Attorneys for Defendant Alan Hirsch